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TO RUEHC/SECSTATE WASHDC PRIORITY 4878
INFO RUEHBY/AMEMBASSY CANBERRA PRIORITY 5030
RUEHNZ/AMCONSUL AUCKLAND PRIORITY 1538
RUCPDO/USDOC WASHDC PRIORITY 0195
RUEHRC/DEPT OF AGRICULTURE WASHDC PRIORITY
RHHMUNA/CDR USPACOM HONOLULU HI PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

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STATE PASS TO USTR, STATE FOR EAP/ANP, EEB/IPC JCHAMBERS,
INR, PACOM FOR J01E/J2/J233/J5/SJFHQSTATE

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SUBJECT: STATUS UPDATE OF NEW ZEALAND COPYRIGHT AMENDMENT
BILL

11. (SBU) Summary. New Zealand's 2007 Copyright Bill as amended by the Parliamentary Select Committee falls short of international standards set by the World Intellectual Property Organization's (WIPO) Internet Treaties and is out of step with the standards set in the domestic legislation of New Zealand's major trading partners. Two issues of particular concern to the copyright industry enumerated in the Bill - technological protection measures (TPMs) and the issue of Internet Service Provider (ISP) liability - are core issues of copyright protection crucial to stake holders throughout the world. The U.S. position is that the copyright legislation be in line with the same levels of protection set by the U.S., EU, Australia and other countries with thriving intellectual property industries. If the Bill is enacted in its current form, New Zealand will not be able to provide the legal certainty needed for the development of on-line products and services, and risks becoming a haven for internet piracy. End summary.

GNZ Parliament's Controversial Draft IPR Bill

12. (SBU) Ambassador and Econoff met on October 30 with NZ Minister of Trade Phil Goff, his staff, and Ministry of Economic Development (MED) officials, to discuss the status of the NZ Copyright Amendment Bill and to bring to the Minister's attention shortfalls in the legislation initially highlighted by both USTR and the major U.S. intellectual property (IP) trade associations (IIPA - print, MPAA - film, RIAA - recordings). The Ambassador's message not only touched on the specific technical corrections needed to bring several provisions of the Bill into conformance with international standards but also to explore with the Minister the effects a substandard copyright regime could have on trade. We discussed NZ's profile as set out in the U.S. National Trade Estimate (NTE), which recounts the slow progress to date that NZ's has made in modernizing its IP laws and explored the negative impact a poorly drafted law would have on the IP industry. We brought to the Minister's attention some of the problems the draft Bill would create, especially the chilling effect the new criminal sanctions that could be brought against a copyright holder if he/she provides misleading information against a perceived offense/infraction caused by an internet service provider (ISP). The Ambassador explained that the focus of the Bill is overly biased in favor of consumers rather than the

copyright holder. Econoff asked the Minister directly why NZ had not yet adopted the WIPO Internet Treaty as have NZ's major trading partners, to which he replied, "we are attempting to move in that direction." His response contrasts sharply to an earlier response given by MP Tizard (whose office drafted the copyright bill) who tersely responded, "we have our reasons for not joining."

13. (SBU) The meeting with Minister Goff ended with his reassurance that he would raise our concerns in an upcoming Cabinet meeting. He assured us that the Prime Minister was aware of USG concerns regarding the copyright bill, and had heard directly from members of the IP industry in her capacity as the Arts Minister. We stressed that it would be better to get the provision of the Bill sorted out first rather than to force it through a hasty second reading. When pressed, the Minister would not say if Labour felt confident the party had the votes to pass the legislation in its current form. The Embassy arranged to hold a follow-up meeting with the staff of MED and Ministry of Foreign Affairs and Trade (MFAT) to help resolve the differences.

14. (SBU) In earlier consultations with the GNZ, Embassy's Political/Economic Counselor met with Labour MP Tizard (responsible for the bill's development), and with attorneys from MED responsible for drafting the legislation, to share U.S. concerns about the bill's shortfalls. Ambassador McCormick also raised concerns about the bill's deficiencies with Labour MP Maharey who also has responsibility for the copyright bill. (Note: Since assuming responsibility for the Bill, MP Maharey announced he will vacate his seat in Parliament at the end of the current term. End note). The DCM also met with United Future leader, Peter Dunne who confessed that he was unaware of the deficiencies in the law

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and promised to make further inquiries. In follow-up to meeting with Trade Minister Goff, Emboffs met on 31 October with Mark Talbot, Senior Policy Officer for Trade Negotiations and Wendy Matthews, Legal Advisor from MFAT along with Bronwyn Turley, IPR Policy Advisor and Silke Radde, Senior Advisor at MED to explain in detail the concerns we have in the Bill's deficiencies. We were told that our message to the various ministers had been heard and MED was drafting new policy guidance to be discussed in upcoming Cabinet meeting. To date we have learned through local industry contacts that MED is reconsidering its position on ISP provisions but has not given adequate attention to the TSP provisions in the draft Bill.

15. (SBU) Post has held regular meetings with the Motion Picture Association's (MPA) local representative, Tony Eaton, who has had extensive discussions with Silke Radde at MED, and learned that the Labour Party does not currently have enough votes to pass the Copyright Bill in its present form. Opposition National Party's MP Chris Finlayson has officially registered his objection to the Bill during the second reading and canvassed other minority parties like NZ First and ACT to seek their support. Finlayson has also said he proposed to other parliamentarians to withdraw the bill until 2009 (after elections) or make the required technical corrections to make the bill suitable to industry. Following a two-week recess, Parliament resumed on November 6 to continue deliberations on various legislative measures but Copyright Bill remains low on the Parliament Order Paper. We will continue to track MED's work on the draft copyright bill until Parliament recesses for the Christmas holidays (i.e., December 11 through early February).

Comment

16. (SBU) With an estimated turnover of NZ\$2.6 billion in annual sales generated from copyrighted materials in the NZ market, it makes little economic sense for the GNZ to adopt standards of copyright protection that are out of phase with

international IP treaty levels, and especially those of its major trading partners (U.S., EU and Australia). Furthermore, any consideration of future free trade discussions would at least require NZ to adopt IP protection that conforms to the ISP liability and TPM protection measures that feature in all U.S. free trade agreements. Post will continue to engage with the MED, MFAT and NZ parliamentarians to ensure that the New Zealand IP regime better conforms to international standards.

McCormick